

APPLICATION OF (name) **Kenneth Karl Vuylsteke**
TO THE APPELLATE JUDICIAL COMMISSION FOR THE
JUDGE AHRENS VACANCY
MISSOURI COURT OF APPEALS, EASTERN DISTRICT

***RESPONSES TO THESE QUESTIONS, INCLUDING ATTACHMENTS THERETO,
WILL BE MADE PUBLIC IF THE APPLICANT IS NOMINATED FOR THIS VACANCY***

1. Present principal occupation or title:

Partner, Fox & Vuylsteke LLP

2. Are you at least 30 years of age? Yes (X) No ()

3. (a) How many years have you been a citizen of the United States?

60 years

(b) How many consecutive years immediately preceding your application have you been a qualified voter of Missouri?

35 years

4. State the date you were admitted to The Missouri Bar and whether your license is in good standing. If not, explain in detail.

September 13, 1980. My license is in good standing.

5. List any other states, courts, or agencies in which you are licensed as an attorney.

Illinois Bar – 1981

United States District Court, Eastern District of Missouri – 1981

United States Court of Appeals, 8th Circuit – 1980

United States Supreme Court, 1999

6. (a) State the name and address of all colleges and universities attended, other than law school, together with the dates and degrees received.

Illinois State University
100 N. University St.
Normal, IL 61761
1972 – 1976
Bachelor of Science

- (b) List/describe any college or university activities, scholastic achievements and other awards or honors you think are relevant to the commission's decision.

- Dean's List, all four years.
- Last semester of college I was an intern with the United States Attorney's Office in Washington, D.C. in the inaugural class of the Washington Center for Learning Alternatives.

7. (a) State the name and address of all law schools attended together with the dates and degrees received.

Washington University School of Law
1 Brookings Drive
St. Louis, MO 63130
1977 - 1980
Juris Doctor Degree

- (b) List/describe any law school activities, scholastic achievements and other awards or honors you think are relevant to the commission's decision.

Moot Court Finalist, Second Year

Moot Court Finalist, Third Year

Mock Trial Team, Third Year

AWARDS

- Lon O. Hocker Memorial Trial Lawyer Award – 1986

Awarded by the Missouri Bar Foundation “to selected young members of the bar under age 36 for noteworthy professional competence as trial lawyers who inspire all lawyers engaging in the trial practice to renewed devotion and appreciation of the attributes, duties and obligations of the trial lawyer and for the representation of clients in judicial proceedings in the trial and appellate courts, thereby giving outstanding expression to the qualities of professional competence, industry, integrity and courtesy.”

- President’s Award – 2003

Given by the President of the Missouri Association of Trial Attorneys

- Defender of Patient Safety – Missouri Watch – 2005
- Legal Champion Award – Missouri Lawyers Weekly – 2013

This award was for representing the Board of Directors of St. Stanislaus Kostka when they were sued by the Archdiocese of St. Louis in an attempt to confiscate the church’s real and personal property.

- Outstanding Service Award – Missouri Association of Trial Attorneys - 2015

8. State, in chronological order (starting with the earliest employment) (a) significant non-law-related employment prior to law school and (b) all employment from the beginning of law school to the present. To the extent reasonably available to you, include the name and address of each employer and the dates of employment, and, for legal employment, describe the positions you have held, e.g., associate, partner, law clerk, general counsel.

- a) Goldblatt’s Department Store, 1970 – 1975

Town & Country Shopping Center
Springfield, IL 62704

- Stock Boy/Sales Clerk

- b) Londrigan, Potter and Randle
1227 S. 7th Street

Springfield, Illinois 62703
1977 – 1979

- Investigator/Law Clerk

Gartenberg & Roussin
777 Bonhomme
Clayton, MO 63105
1977 - 1978

- Law Clerk

Eugene Fahrenkrog, P.C.
7 N. 7th Street
St. Louis, MO 63101
1978 – 1980

- Law Clerk

Fahrenkrog & Foehner
7 N. 7th Street
St. Louis, MO 63101
1980 – 1981

- Associate

Foehner & Vuylsteke
1108 Olive Street
St. Louis, Missouri 63101
1981 – 1990

- Partner

Fox & Vuylsteke LLP
110 E. Lockwood
Webster Groves, MO 63119
1990 – Present

- Partner

9. If, as a student, you were suspended, placed on probation or expelled by school authorities for any reason, describe the circumstances.

N/A

10. Describe the nature of your experience in trial and appellate courts and explain how they demonstrate the quality of your legal work. *(You either may take as much space as you need here or attach your response on separate sheets. It is your responsibility to redact any confidential information.)* Include in your response:

On September 13, 1980, I was sworn in as an attorney in the State of Missouri by Chief Judge Carl Gaertner of the Circuit Court of the City of St. Louis. He immediately assigned me out to trial where I brought an action against Bi-State Development Agency for a slip and fall on their bus. Bi-State was defended by attorney Tom DeVoto. Honorable James Gallagher presiding. After two days of trial, a jury verdict was rendered in favor of the defendant.

Thereafter, I tried over 50 jury trials through 1986. My legal career began as a high volume plaintiff practice consisting mostly of personal injury cases. Because contributory negligence was still the law of Missouri, many more cases were tried at that time until the Missouri Supreme Court adopted comparative fault in Gustafson v. Benda. I did not keep records of all the cases I tried during that period but I do specifically recall on three separate occasions losing two jury trials in one week. The day I was sworn in, I had responsibility for over 300 cases pending in the Circuit Courts of the State of Missouri, mostly in the City of St. Louis. This was a result of the number of referral cases to my employers Eugene Fahrenkrog and Charles Foehner.

In 1986 at age 36, I became the second youngest attorney to receive the Lon O. Hocker Trial Lawyer Award from the Missouri Bar Foundation. Subsequently, my practice evolved into more complex areas of the law, particularly medical malpractice and product liability.

- a) **Appellate Experience:** Please include a representative list of cases you have briefed and/or argued (if you are a judge, include representative cases from your practice prior to your judicial appointment) including, to the extent reasonably available to you, the style, date, and court and, if published, the citation; identify the client(s) you represented and opposing counsel; give a one-paragraph description of the case and your role.

Stoughton v. Colla, 634 F. 2d 1075 (8th Cir. 1980). Malicious prosecution case.

Plaintiff Suzy Stoughton put her husband through medical school and they purchased a home together. When the relationship terminated, he used scissors to cut up all her clothes and when she retrieved several personal items in the home, falsely charged her with burglary and stealing. Verdict for actual and punitive damages rendered for Ms. Stoughton in District Court before the

Honorable William Hungate. Briefed and argued the case before the United States Court of Appeals for the 8th Circuit and the trial judgment was affirmed.

K.F.C. National Management Corporation, 615 S.W. 2d 28 (Mo. banc 1981). Constitutionality of the Missouri Service Letter Statute.

David Hanch, former manager for K.F.C. was discharged and requested a Service Letter pursuant to §290.140, RSMo 1978. False reasons were given for his discharge and a jury returned a verdict for actual and punitive damages. K.F.C. appealed challenging the constitutionality of the Service Letter Statute as violative of due process and equal protection. Briefed and argued the case before the Supreme Court of Missouri which upheld the verdict and ruled the Service Letter Statute was not unconstitutional.

Lewis v. Rynkowski, 639 S.W. 2d 842 (Mo. App. E.D. 1982). Auto accident briefed and argued the case on behalf of Elmer Lewis who was injured in a car accident. Judgment for Mr. Lewis was upheld.

Tucker v. Delmar Cleaners, Inc., 637 S.W. 2d 222 (Mo. App. E.D. 1982). Libel action.

Verdict rendered for Ethel Tucker as a former employee of Delmar Cleaners. Briefed and argued the case and the jury verdict was reversed by the Court of Appeals.

Bass v. Feld Chevrolet, Inc., 645 S.W. 2d 14 (Mo. App. E.D. 1983). Automobile fraud case brought by Ricky Bass resulting in a jury verdict for actual and punitive damages.

After a remittitur by the trial court, the automobile dealer appealed. Briefed and argued the case upholding the trial court ruling a submissible case was made for fraud.

King v. Davis Natural Bridge, Inc., 655 S.W. 2d 63 (Mo. App. E.D. 1983). Slip and fall injury.

Beverly King fell at a McDonald's on water and snow resulting in personal injuries. Jury verdict was rendered for the plaintiff. Briefed and argued the appeal on behalf of Mrs. King upholding the trial court's ruling a submissible case was made for premises liability and the closing argument of plaintiff's counsel was not prejudicial.

Williams v. Venture Stores, Inc., 673 S.W. 2d 480 (Mo. App. E.D. 1984). False imprisonment/false arrest.

Plaintiff Karen Williams was accused of stealing from her employer. She was not convicted of any crime but was arrested and briefly jailed. A warrant was applied for but refused and she was released. The jury rendered a verdict for the defendant store. Briefed and argued the appeal, however, the verdict of the jury was upheld.

Smith v. City of St. Louis, 671 S.W. 2d 446 (Mo. App. E.D. 1984). Slip and fall.

Rita Smith was injured when she fell in a hole on a sidewalk cut out around a fire hydrant. Jury verdict for plaintiff. I tried this case to a jury, briefed and argued the appeal. Judgment for plaintiff was upheld.

Estate of Buckley v. Schnackenberg, 677 S.W. 2d 946 (Mo. App. W.D. 1984). Will contest.

Represented Gary Schnackenberg and his wife regarding a specifically devised interest in one-half of a 160 acre farm. Co-counsel in a bench trial which resulted in a judgment for the Schnackenbergs. Briefed and argued the appeal before the Western District which reversed and reduced the amount of property awarded to the Schnackenbergs under the decedent's will.

Vardiman v. Appleton, 684 S.W. 2d 65 (Mo. App. E.D. 1984). Auto accident.

Represented defendant Deborah Appleton and obtained a jury verdict on a counterclaim. Briefed and argued the appeal where the judgment in favor of the defendant was affirmed.

Kelley v. Wiggins, 291 Ark. 280 (Ark. 1987). Medical malpractice in the State of Arkansas.

Plaintiff's decedent Melinda Wiggins died after giving child birth. An action for medical malpractice and wrongful death by her husband, surviving daughter and the estate resulted in a verdict for all three plaintiffs. Briefed and argued the case before the Supreme Court of Arkansas. The jury verdicts were upheld.

Mitchell v. McArthur, 743 S.W. 2d 604 (Mo. App. E.D. 1988). Sports injury.

Represented a softball player against the owners and operators of a softball field for injury she sustained after a slide into home plate. The trial court dismissed holding the petition did not state a negligence cause of action against the owners and operators of the field as it did not contain an allegation as to the player's status as either invitee, licensee or trespasser and thus did not allege what duty, if

any, was owed to her. Briefed and argued the appeal which upheld the dismissal of the plaintiff's cause of action.

Baidy v. Marah, 760 S.W. 2d 195 (Mo. App. E.D. 1988). Auto accident.

Represented the wife of an automobile passenger killed in a collision with a vehicle being pursued by a police officer for a traffic violation. Summary judgment was granted in favor of the police officer by the trial court. Briefed and argued the appeal which upheld summary judgment as proper under the doctrine of official immunity or alternatively under the public duty doctrine.

Kuda v. American Family Mutual Insurance Company, 790 S.W. 2d 464 (Mo. banc 1990). Insurance contract. Bench tried, briefed and argued.

Represented the plaintiff/insured who collected under her uninsured motorist provision and sued to recover for medical expenses under the medical expense provision of her automobile policy. The insurer was granted summary judgment on the grounds of limitation of liability clause in the medical expense provision. The Missouri Court of Appeals Eastern District affirmed the trial court's judgment but transferred the case to the Missouri Supreme Court. The Court held the purpose of the uninsured motorist coverage is to establish protection equivalent to liability coverage the insured would have received had the insured been involved in an accident with the insured tort-feasor, however, the language of the policy contained in the medical expense provision that required amounts paid under medical expense provision be reduced by the amount paid under the insured motorist coverage was improper and therefore the insured was entitled to receive payment of medical expenses up to the \$2,000 limit contained in the medical expense provision. Accordingly, the Supreme Court reversed and remanded and ordered payment to Ms. Kuda. Handled this case pro bono.

Ralph v. American Family Mutual Insurance Company, 809 S.W. 2d 173 (Mo. App. E.D. 1991). Class action. Bench tried, briefed and argued.

After the Supreme Court rendered its decision in Kuda, I represented plaintiff Marvin Ralph and others in actions individually and as class representatives against American Family Insurance for all American Family insureds who had been aggrieved by the provision ruled invalid in the Kuda decision. The trial court granted a motion to dismiss. Plaintiffs' class action was not a final appealable order and the order denying class action status was deemed not appealable as an exception to the general rule. Accordingly, the appeal was dismissed.

Harris v. F.W. Woolworth, 824 S.W. 2d 31 (Mo. Appl. 1991). Slip and fall.

Briefed and argued.

Alma Harris brought a slip and fall action against a store owner after falling on grease in an alley. The jury verdict was for the plaintiff. On appeal, the case was reversed for an improper jury instruction by the plaintiff.

Ralph v. American Family Mutual Insurance Company, 835 S.W. 2d 522 (Mo. App. E.D. 1992). Insurance contract. Bench tried, briefed and argued.

This was a follow-up to the previous Ralph case described above. I represented class representatives Marvin Ralph and Cathryn Wurtz who did not receive full medical payment benefits because of a set-off provision in an automobile policy reducing payments by amounts received for uninsured motorist coverage. After both class representatives were tendered the full amount of their claims and the money was paid in to the registry of the court, the trial court granted summary judgment in favor of American Family. On appeal, the court held the case could not be certified as a class action since no common questions of law or fact existed after plaintiff Cynthia Kuda had prevailed on her claim affirmed by the Missouri Supreme Court in Kuda v. American Family Insurance Company, 790 S.W. 2d 464 (Mo. banc 1990).

Cidlik v. Subsurface Contractors, 110 S.W. 3d 856 (Mo. Appl. E.D. 2003). Workers compensation claim. Tried, briefed and argued.

Represented Robert Cidlik in his claim for work injuries against his employer. After Mr. Cidlik receiving a favorable award by the Administrative Law Judge, the employer appealed to the Labor and Industrial Relations Commission. Whether the appeal was timely was disputed as the date marked on the envelope containing the Application for Review was illegible. The case was reversed and remanded to the Industrial Relations Commission for an evidentiary hearing to allow the employer, if possible, to prove the actual date the Application for Review was placed in the mail.

Hull v. Fallon 188 F. 3d 939 (8th Cir. 1999). HMO malpractice.

After claims against an HMO and its medical director were dismissed by the District Court for failure to state a cause of action, I briefed and argued the appeal. The 8th Circuit affirmed holding ERISA-qualified health maintenance organizations and their medical directors are not liable for medical malpractice.

State ex rel. Ford Motor Co. v. Manners, 239 S.W. 3d 583 (Mo. banc 2007).

After settlement was reached in a wrongful death/products liability action against an automobile manufacturer, plaintiffs filed a motion seeking to retain

documents that were subject of a non-sharing protective order and to vacate that order. The trial court sustained plaintiff's motion and the manufacturer filed a Petition for Writ of Prohibition. Argued the case on behalf of the trial judge in the Supreme Court. The Supreme Court reversed, holding the vacation of non-sharing protection after settlement was reached was an abuse of discretion and therefore made the Preliminary Writ Absolute.

The Parish v. Hettenbach, 303 S.W. 3d 591 (Mo. App. E.D. 2010). Bench tried as co-counsel and on the brief.

This interlocutory appeal involved a claim by the Archdiocese and others against Polish Roman Catholic St. Stanislaus Parish, Directors of the Parish Board and the Parish Pastors seeking declaratory and injunctive relief in a dispute involving the validity of the Parish's by-laws and the manner in which the Parish held its property. Represented defendants St. Stanislaus' Board of Directors. We filed a Motion to Disqualify the law firm representing the Archdiocese. The trial court denied the motion and we filed a Motion for Writ of Prohibition. The preliminary Writ was made permanent in part and quashed in part and the trial proceeded on the merits which resulted in a bench trial judgment in favor of St. Stanislaus and its' board of directors.

Hopfer v. Neenah Foundry Co., Appeal No. ED101754, Missouri Court of Appeals Eastern District (2015)(pending case). Product liability. Tried, briefed and argued.

Represented Norman Hopfer for catastrophic injuries sustained when his vehicle drove into a hole where a drainage grate had dislodged. Claim for product liability against the manufacturer of the drainage grate resulted in a jury verdict in favor of the manufacturer. The case has been briefed and argued and is currently awaiting decision by the Eastern District.

- b) **Trial-Level Experience:** Please include a representative list of cases and/or administrative hearings you have handled (if you are a judge, include representative cases from your practice prior to your judicial appointment) including, to the extent reasonably available to you, the style, date, and court; identify who you represented and opposing counsel; state whether the case was disposed of following a jury trial, bench trial or at what other stage; give a one-paragraph description of the case and your role.

Carrie Belle Collins v. Lammert Furniture, Cause 792-1839, Circuit Court City of St. Louis. Defense counsel William Davis.

Represented the plaintiff who was injured by a falling fixture in an elevator at

Lammert Furniture. She received a soft tissue injury to her head. This was the first jury trial I won after losing my first four cases.

Daniel Roemmich v. K-Mart, United States District Court, Eastern District of Missouri. Tried before the Honorable Clyde Cahill (1981). False imprisonment/malicious prosecution case.

Represented a conductor for Terminal Railroad who was falsely accused of stealing three packs of razor blades from K-Mart. After he was acquitted at the criminal trial, this action was brought pursuant to diversity jurisdiction. The jury rendered verdict for the plaintiff awarding him \$375,000 for false imprisonment and \$375,000 for malicious prosecution, both at that time the largest verdicts in the history of Missouri for those torts. Judge Cahill remitted the verdicts to \$111,000 and the case settled.

Connie Hopkins, et al. v. Monsanto, Circuit Court of the City of St. Louis, Cause No. 22852-05867. Defense counsel John Sandberg.

Represented the widow of Eddie Hopkins who was a tank truck cleaner for Slay Transportation. He became sensitized to a plastic monomer maleic anhydride and suffered an anaphylactic response and death. The issue was whether the Material Safety Data Sheet properly warned of the risk to the human immune system. After three weeks of trial and seven days of jury deliberations, the jury hung 7 - 5 for plaintiff. The case was subsequently settled.

Barbara Daum v. GHP, Inc., Circuit Court of the City of St. Louis, Cause No. 22892-08797. Defense counsel Kathleen Pine.

Represented the children of a woman who died from an alleged failure to timely diagnose esophageal cancer. Jury verdict for the defendant.

Ursula Ortmeier v. Union Electric and Gateway Hotel Holdings, Inc., Circuit Court City of St. Louis, Cause No. 22922-08585. Defense counsel James Virtel for Union Electric and Priscilla Gunn for Gateway Hotel Holdings, Inc.

I was co-counsel with Mark Ludwig of Jefferson City representing Ms. Ortmeier in a claim for electrical injuries sustained when released balloons entangled with power lines causing the lines to burn apart, drop down and injure the plaintiff. Defendant Union Electric prevailed on a claim against them for failure to insulate or isolate the wires. Jury verdict for plaintiff against the hotel. In this case, I handled all the medical evidence and the rebuttal during closing argument.

Lelia Jones v. Christy Ipock-Ice, Circuit Court of the City of St. Louis, Cause

No. 22942-09641. Defense counsel James Barr.

Represented Ms. Jones in an auto accident. She sustained substantial injuries and a jury verdict was rendered in her favor.

Richard Sturm v. Osage Beach Hospital, United States District Court, Western District, Central Division. Defense counsel Richard Lombardo.

Medical malpractice case for failure to diagnose a talus fracture suffered by my client, Mr. Sturm, after he fell from a roof. The jury rendered a verdict in favor of the defendant hospital.

Randy Otto v. Laclede Gas Company, Circuit Court of the City of St. Louis, Cause No. 22804-00222. Defense counsel unknown.

This was a rear-end auto accident where I represented Mr. Otto. A verdict was returned in favor of the plaintiff, however, 85% of the fault was assessed against him.

Rita Smith v. City of St. Louis, Circuit Court of the City of St. Louis, Cause No. 22812-04175. Reported on appeal at 671 S.W. 2d 446 (Mo. App. E.D. 1984). Defense counsel Stephen Kovac.

Slip and fall case for alleged defect in a city sidewalk where the plaintiff fell and fractured her femur. A jury verdict was rendered in favor of my client Rita Smith, and affirmed on appeal.

Scott v. Coca Cola Bottling Company of St. Louis, 82-997C(3), United States District Court, Eastern District of Missouri. Defense counsel Ross Friedman.

Federal civil court appointment where I was ordered to represent the plaintiff Arlene Scott for Title VII, racial discrimination. Ms. Scott claimed her discharge from Coca Cola was racially motivated. In this federal bench trial, Judge Hungate rendered judgment in favor of Coca Cola. This case is reported at 583 F. Supp. 191 (D. Mo. 1984).

Simmons v. Barnes-Jewish Hospital, Circuit Court of City of St. Louis, Cause No. 22882-00746. Defense counsel Robert Rosenthal.

Medical malpractice case for failure to diagnose heparin-induced thrombocytopenia thrombosis. I represented Mr. Simmons and jury verdict was rendered in favor of the hospital.

Swain v. Mercy Medical Group and Betsy Crybinals, M.D., Circuit Court of St.

Charles County, Cause No. 0611-CV01932. Defense counsel Kenneth Bean.

Medical malpractice case for wrongful death of a child. Represented the mother Cynthia Swain, who was the mother of a newborn child that eventually starved to death allegedly due to failure of medical personnel to properly advise Mrs. Swain on the proper nutritional status of her child. Jury verdict for the defendant medical providers.

Archdiocese of St. Louis v. St. Stanislaus Kostka, Circuit Court of the City of St. Louis, Cause No. 0822-CC07847. Plaintiff counsel Bernard Huger.

I was third chair defense counsel along with Richard Scherrer and Winston Calvert representing the defendants St. Stanislaus Kostka and their board members in a bench trial before the Honorable Bryan Hettenbach. After a three week trial, the Archdiocese 's attempt to confiscate the property and monetary assets of St. Stanislaus Kostka was rejected by the trial court. The case was subsequently settled.

Hopfer v. Neenah Foundry Co., Circuit Court of the City of St. Louis, Cause No. 1122-CC09747. Defense counsel Bradley Hansmann.

Product liability case involving catastrophic injuries to Mr. Hopfer as a result of an allegedly defective drainage grate that caused him to lose control of his vehicle, crash and become paralyzed. After a two week jury trial, a verdict was returned in favor of the defendant manufacturer. This case is currently on appeal before the Missouri Court of Appeals Eastern District, Appeal No. ED101754 (2015).

Julia Albright v. Jefferson City Medical Group, Cole County Circuit Court, Cause No. 12AC-CC00292. Defense counsel Scott Pool.

Medical malpractice case where I represented Mrs. Albright who fell from a treadmill causing bilateral tears of her rotator cuffs. Case was tried earlier this year and a jury verdict was rendered in favor of Mrs. Albright. After post-trial motions were denied, the case subsequently settled.

- c) **Judicial Experience:** If you are a judge, commissioner, or are serving or have served in other judicial capacity, please describe the nature and extent of your judicial responsibilities, including the dates you have served as a judge at each level, the types of dockets you have handled, and any special expertise you have developed that you believe is relevant to your qualifications for the position for which you are applying.

N/A

11. Describe any additional legal experience that you believe may be relevant to the decision of the commission (e.g., work as a law professor, in government, as corporate or other legal counsel).

LAW PROFESSOR

Adjunct Professor of Law
St. Louis University
2005 – 2006

- Trial Practice

Adjunct Professor of Law
Washington University
2006 – 2009, 2013

- Taught a course I designed entitled “Protecting Patients: Physicians and Attorneys as Advocates.” This upper level seminar course teaches students how to represent patients, on a pro bono basis, who have been denied payment for life-saving medical care by their health plans.

GOVERNMENT

Since 2003 I have read and analyzed nearly every bill in the Missouri Legislature impacting on the judiciary and civil justice system. As a member of the Executive Committee of the Missouri Association of Trial Attorneys, I testified before Senate and House Committees on a wide variety of proposed bills affecting civil law and the civil justice system. In 2003 through 2005 and 2014 through 2015, in particular, I routinely spent 2 – 3 days a week in the Capitol during session meeting with legislators and members of the executive branch all in conjunction with my duties as a member of MATA’s Executive Committee. I also participated in drafting and negotiating legislation on behalf of numerous House and Senate members. This experience has provided insight and expertise in analyzing and interpreting statutory language.

12. List all bar associations and other professional societies of which you are a member, with any offices held and dates.

Bar Association of Metropolitan St. Louis
(Members are attorneys and judges from all areas of the law.)

- Chair – Medical Legal Committee, 1997 – 2006

The purpose of the Committee is to foster better relationships and understanding between the two learned professions.

Lawyers Association of St. Louis

(Members are defense attorneys, plaintiff attorneys and judges)

- President-elect 2015

Missouri Association of Trial Attorneys

(Members consist of approximately 1,400 plaintiff attorneys)

- Vice President 2012 – 2013
- President-Elect 2013 – 2014
- President 2014 – 2015
- Immediate Past President 2015
- Executive Committee 2004 – Present
- Board of Governors 1998 – Present

Missouri Bar Association 1980 – Present

Illinois Bar Association 1981 – Present

American Association of Justice

(Members are plaintiff attorneys nationally)

- Missouri Delegate 2002 – 2004
- Board of Governors 2011 – 2012

13. Describe your efforts (e.g. work on bar committees, pro bono efforts, CLEs presented, etc.) to contribute to the improvement of the law, the legal system and the administration of justice.

BAR COMMITTEES

The Bar Association of Metropolitan St. Louis. Chair – Medical-Legal Committee (1996 – 2007). The purpose of this committee is to foster better relationships and understanding between the two learned professions. While chair of this committee, I authored numerous articles published in St. Louis Metropolitan Medicine. They are listed in answer to question 16.

The Missouri Association of Trial Attorneys. Chair – HMO Health Law Committee (1988 – 2008). This committee was instrumental in working with the legislature and the Missouri Medical Society in trying to reach compromise on tort reform issues especially during the years 2003, 2004 and 2005. In addition, this committee worked to establish tort liability for ERISA-qualified health plans who make decisions denying payment for medical care needed by their members.

PRO BONO EFFORTS

After failing to establish ERISA health plans (f/k/a HMOs) should be held civilly liable for malpractice damages when they deny payment for medical services needed to preserve a patient's life and health (*see Hull v. Fallon*, 188 F. 3d 939 (8th Cir. 1999); I designed and taught "Protecting Patients: Physicians and Attorneys as Advocates at the Washington University School of Law (2006 – 2009) (2013).

This upper level seminar teaches law students pro bono representation of patients whose ERISA-qualified health plans have denied payment of life-saving medical care. Essentially this course is an outline of the pro bono work I have been doing since 2000. The course is described in more detail in my recommendation letter from a former client **Lisa Pannett** who participated as a guest speaker at courses that I instructed.

I also represented board members of St. Stanislaus Kostka when they were excommunicated and then sued by the Archdiocese of St. Louis for their refusal to turn over private church property and St. Stanislaus' monetary savings. This resulted in a three week bench trial and a judgment rendered in favor of St. Stanislaus and its board members. (*See The Parish v. Hettenbach*, 303 S.W. 3d 591 (Mo. App. E.D. 2010) (*See also, Awards "Legal Champion," Missouri Lawyers Weekly 2013*).

CLE

No records prior to 1995. The following is a representative list of CLE presentations to judges, attorneys and law students. I was a speaker at all of the seminars listed below.

“Civility in the Courtroom.” Bar Association of Metropolitan St. Louis (BAMSL), May 31, 2014.

“Premises Liability.” Missouri Bar, February 26, 2014.

“Electronic Records Discovery.” Missouri Trial Judge Education Committee, March 7, 2013.

“Submission of Medical Bills at Trial.” Missouri Trial Judge Education Committee, March 7, 2013.

“Electronic Records Discovery.” Missouri Association of Trial Attorneys (MATA), June 23, 2013.

“Premises Liability.” Missouri Bar, February 27, 2013.

“Premises Liability.” Missouri Bar, February 29, 2012.

“Premises Liability.” Missouri Bar, February 23, 2011.

“What Would Atticus Do?” MATA, June 24, 2011.

“Judicial Forum.” Moderator, BAMSL Bench and Bar Conference, June 4, 2011.

“Independent Medical Exams.” MATA/Missouri Organization of Defense Lawyers, April 29, 2010.

“Constructing the Case: Nuts and Bolts of Evidence.” Missouri Bar Annual Meeting, September 30, 2010.

“Premises Liability.” Missouri Bar, February 24, 2010.

“Objection Sustained: Recognizing Abusive and Unethical Trial Practices.” Missouri Bar Annual Meeting, September 25, 2009.

“New Motion Practice in the City of St. Louis.” Lawyers Association of St. Louis, January 30, 2009.

“Principal Address: Memorial Service.” Lawyers Association of St. Louis, May 16, 2008.

“Protecting Patients: Physicians and Attorneys as Advocates.” MATA, June 23, 2007.

“Tort Actions Involving Healthcare Providers.” Office of State Courts Administrator (OSCA), April 27, 2007.

“Punitive Damage Issues.” OSCA, April 27, 2007.

“New Parameters for Representing Clients in Tort Cases.” MATA, October 14, 2005 (Springfield); October 21, 2005 (St. Louis).

“Tort Reform: How it Affects Your Practice and What Can You Do About It.” BAMSL, May 2, 2003.

“Tried and True Tips for the Trial Attorney.” MATA, April 12, 2002.

“Attorney Advertising” and “HMO Ethics.” Washington University School of Law: Law, Medicine and Ethics Class, November 2001.

“HMO Liability.” Lawyers Association of St. Louis, March 19, 1998.

“Hot New Topics for the Trial Attorney.” MATA, October 10, 1997 (Kansas City); October 24, 1997 (St. Louis) and October 30, 1997 (Springfield).

“Everything You Wanted to Know About Insurance Law But Were Afraid to Ask: Stacking Policies.” Lawyers Association of St. Louis, March 31, 1995.

14. List your community activities, including any organizations not listed elsewhere with which you are affiliated.

Lupus Foundation of St. Louis. Vice President 1994 – 1995.

Salvation Army Hope Center for Children. Advisory Board 2001 – 2005, President of Advisory Board 2005. Residential facility serving battered and abused children transitioning into foster homes.

Salvation Army. Advisory Counsel 2006 – 2007; Governing Advisory Counsel for all Salvation Army charities in the St. Louis metropolitan area.

I continue to support the Lupus Foundation and Salvation Army

15. Describe your activities (e.g. speeches, presentations, educational activities, etc.) undertaken to further public understanding of and respect for courts and the judicial system and to promote access to justice for all.

- “Understanding Tort Law.” Inaugural Semester of the Mini Law School for the Public. Missouri Bar, Spring 2009 taught at St. Louis University Law School
- “Applied Bioethics.” American Society of Interventional Pain Physicians: Board Review, July 29, 2008 and “Ethics in Interventional Pain Management.” American Society of Interventional Pain Physicians: Board Review, July 31, 2008.

At the request of the Executive Committee of the National Board licensing body for Interventional Pain Physicians, I taught the above two courses to interventional pain physicians at the four day board review course held in St. Louis, Missouri.

- “Successful Strategies in Developing Trial Themes” and “Expert Testimony Trial Tips.”

Presented to: The Staff of the Missouri Public Service Commission in Jefferson City on April 27, 2007 at the request of PSC Chair Jefferson Davis.

- “Medical Malpractice and Tort Reform: Finding Truth and Common Ground.” Public Forum, Washington University School of Medicine, January 22, 2005.

At the request of the general surgery department at Washington University and the Humanities Department, I was part of a panel presentation explaining the issues surrounding tort reform in general and medical malpractice reform in particular.

- “Prompt Pay Challenge for 2002.” St. Louis Metropolitan Medical Society, November 2001.

At the request of SLMMS I presented a program explaining how physicians could litigate claims against health plans who fail to make payment to them in a timely manner.

- “Ethics and Patient Safety.” Missouri Watch, November 2, 2005.

This was a presentation to members of the Missouri State Legislature to both the Democratic and Republican parties detailing the ethical concerns surrounding damage caps placed on different types of medical malpractice claims including wrongful death.

- “Effects of Managed Care on Patient Safety.” Association of American Physicians and Surgeons Annual Meeting, October 25, 2000.

I was part of a panel discussion discussing the implications of managed care guidelines on patient safety. This was presented for a group of physicians and surgeons from around the United States at the AAPS Annual Convention in St. Louis.

16. List any professional articles or books authored by you that have been published or any special recognition or award of a professional nature you have received.

MEDICAL JOURNAL ARTICLES

Physicians Judging Medical Negligence: A Conflict of Values, **Surgery**, Vol. 157, No. 4, April 2015, p. 818

An Imperfect Shield: Suggestions on Avoiding Malpractice, **St. Louis Metropolitan Medicine**, Vol. 31, No. 4, July/August 2009, p. 10

The Human Genome Project: Expanding the Conversation, **St. Louis Metropolitan Medicine**, Vol. 23, No. 9, September 2001, p. 15

Leading the Way, **St. Louis Metropolitan Medicine**, Vol. 22, No. 3, March, 2000, p. 25

Culling the Defectives, **St. Louis Metropolitan Medicine**, Vol. 21, No. 3, March, 1999, p. 19

Sharing your Malpractice Pain, **St. Louis Metropolitan Medicine**, Vol. 21, No. 6, June, 1999, p. 25

Deadly Snake on the Caduceus, **St. Louis Metropolitan Medicine**, Vol. 20, No. 4, April, 1998, p. 28

Resisting the Will to Deny, **Missouri Medicine**, November, 1997, p. 655-657

Lessons from Nuremberg, **Journal of American Medical Association**, March 5, 1997 - Vol. 277, No. 9, p. 711-713

LEGAL PUBLICATIONS

“Paralyzed by Political Expediency.” Missouri Trial Attorney, Summer 2015.

“Increasing Litigation Costs.” Missouri Trial Attorney, Spring 2015.

“The Loss.” Missouri Trial Attorney, Fall 2014.

“Tracking Tort Reform.” St. Louis Lawyer, Vol. XLI, Mo. 12, p. 23, April 12, 2003.

“Health Plans Need to be Held Accountable for Wrongful Conduct.” St. Louis Daily Record, December 3, 1998.

“Health Plans Must be Held Accountable.” St. Louis Post Dispatch. Op. Ed., November 9, 1998.

17. Do you now hold or have you ever held an elective or an appointive public office or position? If yes, provide details.

Missouri Patient Safety Commission. 2003 – 2004.

Commissioner Appointed by Governor Bob Holden. This interdisciplinary commission is described in my letter of recommendation from **Kathryn Nelson**, Vice Chair of the Missouri Patient Safety Commission.

18. Provide the branches and dates of (a) military service or (b) other public service not otherwise disclosed in this application. If discharged from the military, state whether the discharge was other than honorable.

None.

19. State whether you are able, with or without a reasonable accommodation, to perform the essential functions of being an appellate judge, including participating in oral argument; performing legal research; communicating clearly and effectively, both orally and in writing; supervising the lower courts, serving on court committees and performing other administrative functions; and expeditiously deciding issues coming before the court.

Yes. I can perform the essential functions of being an Appellate Judge.

20. Were you ever refused admission to the bar of Missouri or the bar of another state or the federal courts? If yes, provide details.

No.

21. Have you ever been disciplined, admonished or cited for breach of ethics or professional conduct by the Supreme Court of Missouri or by any court or bar association or committee thereof? If yes, provide details.

No.

22. If you are or were a member of the judiciary of the State of Missouri, please state:

- a) Whether an order of discipline ever has been entered against you by the Supreme Court of Missouri for breach of the Code of Judicial Conduct or the Canons of Judicial Conduct. If yes, provide details.
- b) Whether a reprimand or admonition ever has been entered against you by the Commission on Retirement, Removal and Discipline for any of the causes specified in Supreme Court Rule 12.07. If yes, provide details.

N/A

23. Have you have ever been held in contempt of court? If yes, provide details.

No.

24. Have you ever been sued by a client or been a party to any other litigation, other than as guardian ad litem, plaintiff ad litem, or defendant ad litem?

If your answer is yes, state the style of the case, where it was filed, and explain in detail. If you are a judge and you have been sued in your judicial capacity, list only those cases where you are or were other than a nominal party.

Yes.

Londoff v. Vuylsteke, 996 S.W. 2d 553 (Mo. App. E.D. 1999). A disbarred attorney attempted to assert a claim for 50% of an attorney fee earned when I settled a wrongful death action. The Missouri Court of Appeals ruled that such an attempt violated Rule 4-1.5(e) Missouri Supreme Court Rules of Professional Conduct. As a result, the trial court's entry of summary judgment in my favor was upheld.

Ryan Kress v. Kenneth K. Vuylsteke, Daniel McMichael and James Logan. This case is discussed in Kress v. Lederle Laboratories, a Division of American Cyanamid Company, 901 S.W. 2d 206 (Mo. App. E.D. 1995). I was co-counsel in a claim for paralysis as a result of the administration of oral polio vaccine. A lawsuit was brought against several parties where total settlements were obtained in the amount of \$375,000. Two hundred fifty thousand dollars of that money was part of a high/low agreement that was entered into after four weeks of trial. The jury returned a defendant's verdict.

Afterwards, the plaintiff brought a claim against all former counsel for failing to discover the manufacturer of the polio vaccine, Lederle Laboratories, and the United States Division of Biologic Standards deviated from the required testing for oral polio vaccine. Plaintiff settled with all attorneys without suit.

See related litigation

Callahan v. Cardinal Glennon Hospital, 863 S.W. 2d 852 (Mo. banc 1993)
St. Louis University v. United States, 182 F. Supp. 2d 494 (D.C. Maryland 2002)
American Cyanamid Company v. St. Louis University, 336 F. 3d 307 (4th Cir. 2003)

Callahan v. Cardinal Glennon Children's Hospital, 901 S.W. 2d 270 (Mo. App. E.D. 1995).

In Re Sabin Oral Polio Vaccine Products Liability Litigation, 984 F. 2d 124 (4th Cir. 1993)

Sher Wetsch v. Charles Foehner and Kenneth Vuylsteke (1999). Missouri Commission on Human Rights. This was a wrongful discharge/sexual

discrimination claim made by a former attorney who worked with my prior firm for approximately six months. The Missouri Commission on Human Rights found there was no probable cause for the action and dismissed the claim. There was no follow up litigation.

25. Have you ever pleaded guilty, been convicted or received a suspended imposition of sentence for a felony or misdemeanor in state, federal or military court? *(Note that this question does not require that minor traffic offenses or other infractions be listed.)*

If your answer is yes, state the style of the case, where it was filed, and explain in detail.

No.

26. Are you delinquent in the payment of any federal, state, county or city taxes? If yes, provide details.

No.

27. You must attach to this application at least one, but not more than three, writing samples that comply with the requirements set out in the instructions for applicants.

See attached three writing samples.

28. List/describe any additional honors or awards you have received, activities you have performed, or any other information not set out above that demonstrates the quality of your work as an attorney or that you otherwise believe is relevant to the commission's decision.

- Instructor
Washington University School of Medicine
Spring 2002

I taught a course entitled "Ethics and Context of Medicine
Mandatory Treatment: Public Health and Individual Rights"

I team taught this course with Dr. Thomas Gallagher, M.D. to first year medical students. Issues addressed in this course included the permissibility of imposing

treatment and confinement on people with HIV/AIDS and tuberculosis.

- Instructor
Washington University Center for
the Study of Ethics and Human Values

I team taught courses with Dr. Ira Kodner, M.D. addressing various ethical issues in law, medicine and society in general. (See Reference Letter from **Ira Kodner**, M.D.)

Please list the names of *five* persons whom you will ask to provide letters of reference for you with respect to your judicial qualifications. Do **not** list as a reference a judge of the court involved. As to each of the (5) references, **please provide name, title, mailing address, telephone and e-mail address. Please note that it is your responsibility to contact your references**, although if you intend to use as a reference a federal judge or other individual who only can provide a reference upon a specific request by the interviewing authority, please advise the commission and it will send that reference such a request. The commission must receive all reference letters by e-mail no later than **5 p.m. Friday, September 25, 2015**.

Provide your references with the attached Guidelines for References. The commission must receive your letters of reference, **via e-mail**, to EDjudgevacancy@courts.mo.gov, by the date indicated in the Instructions to Applicants.

Five Letters of Reference:

Catherine Perry, Chief Judge
United States District Court
Eastern District of Missouri
Thomas F. Eagleton U.S. Courthouse
111 South Tenth Street
St. Louis, MO 63102
Catherine_perry@mo.ed.uscourts.gov
314-244-7520

Gary E. Snodgrass
Pitzer Snodgrass, P.C.
100 South Fourth Street
St. Louis, MO 63102
Snodgrass@pspclaw.com
314-421-5545

Ira Kodner, M.D.
26 Portland Drive

Frontenac, MO 63131
ijkodner@aol.com
314-454-7177

Kathryn Nelson
871 Tuxedo Blvd.
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Kat.nelson@yahoo.com
573-424-6775

Lisa Pannett
29153 Three Acres Lane
Mehlville, MO 63125
lzpannett@yahoo.com
314-845-0659